

**California Commission
on
Health and Safety and Workers' Compensation**

MINUTES OF MEETING

Meeting Day and Date: Thursday, April 24, 1997

Meeting Location: Secretary of State's Office Building
1500 11th Street (at "O" Street)
First Level Auditorium
Sacramento, California 95814

Commission Members Present:

Chairman James J. Hlawek
Commissioner Leonard McLeod
Commissioner Gerald O'Hara
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Robert B. Steinberg
Commissioner Darrel "Shorty" Thacker
Commissioner Gregory Vach

Commission Members Absent:

None

Commission staff:

Christine Baker, Executive Officer of the Commission

Call to Order

The meeting was called to order at 10:00 a.m. by Chairman James J. Hlawek.

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Adoption of Minutes

Chairman Hlawek asked for a motion regarding the minutes of the Commission meeting on February 20, 1997, which had been submitted for approval by Christine Baker.

Commissioner Vach noted that the draft minutes had misattributed his remark -- on page 22 regarding the cost per conviction -- to Commissioner Steinberg.

Commissioner Thacker moved that the corrected minutes be adopted, Commissioner Vach seconded, and the motion passed unanimously.

Update on Division of Workers' Compensation activities

Chairman Hlawek called upon Casey L. Young, Administrative Director of the Division of Workers' Compensation (DWC), to present an update on DWC activities, including the revision to the Permanent Disability Rating Schedule (PDRS).

Mr. Young announced that he had asked the Disability Evaluation unit manager to attend this meeting in case the Commission wanted a presentation on how DWC came up with the occupational categories back in 1994 when they first came out.

DWC Audit Program

Mr. Young reported that DWC was required to come out with an annual report of audit activities for the previous year and that they were a little bit late on that¹. He stated that the audit report for 1996 is not a lot different from what it was last year.

Mr. Young stated that in 1996, DWC audited about 4,500 files in about 55 audits -- about 1,400 fewer files and 11 fewer audits than was done the year before. The number of penalties for late and unpaid indemnity payments continues to be about the same and the number of penalties of audited files relating to unpaid indemnities increased. The largest amount of penalties of any one audit in the history of the program -- \$117,000 -- was assessed against Golden Eagle Insurance. In 1996, DWC Audit Unit assessed a total of about \$1.1 million in penalties.

¹ Labor Code Section 129(e) specifies that the Division of Workers' Compensation shall issue an audit report by April 1 of each year.

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Mr. Young also wanted to point out the "kinder, gentler" side of the DWC Audit Unit. DWC has been offering workshops for claims which have been very well received. He wanted to emphasize that DWC is interested in compliance not fines, and finds education to be a very useful tool.

Mr. Young next reported that arrest warrants were issued last week for two individuals who worked for a large private insurance company for workers' compensation fraud and offering false status to the DWC audit unit. This action is important for a couple of reasons. This is the first time that the workers' compensation fraud statutes have been used to prosecute someone who has inappropriately denied benefits to workers or paid benefits inappropriately. This is important because it sends a signal that DWC and the criminal justice system are going to take steps against people who give us false evidence in a Department audit.

DWC Claims Adjudication

After the 1993 reforms, Mr. Young said that DWC went through a typical period of changing signals from the Legislature on the amount of resources that it was going to have. They had legitimate concerns on whether in fact we were going to have the workload we had projected back in 1994 when the reforms were implemented. DWC was not able to show that growth the following year and the Legislature took away "a bunch of positions".

Mr. Young states that DWC has now put together a process for evaluating and projecting what the judicial workload will be. On that basis DWC requested and got five judge teams added into the budget. He stated that it has been challenging to move the resources around to reflect where the workload is -- claims went down in Southern California and up in Northern California. Now DWC has been filling positions in places where there had been holes and a workload they couldn't accommodate. For example, the backlog in the Stockton office is "pretty much fixed now".

Mr. Young went on to say that couple of problems continue to haunt DWC in the Los Angeles area. The lien problem is one area that "seems to mutate every time we think we've got a handle on it". Mr. Young said that DWC had a procedure on this for quite some time now to use these lien units that were created in Santa Ana and Anaheim to clean up the backlog of liens. And then from here on out DWC would handle liens at the same time the case-in-chief was heard, if at all possible.

Mr. Young also said that DWC was trying to deal with the problem of continuances and multiple appearances.

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DWC Statistical data

Mr. Young indicated that DWC was working diligently to improve its current statistical information, expected in a couple of months.

Vocational Rehabilitation

Mr. Young reported that the DWC Rehabilitation Unit has started a massive project to develop guidelines for staff. The goal is to achieve greater consistency in decision-making by Rehabilitation Unit consultants.

Hospital Fee Schedule

Mr. Young stated that one of last remaining items from the 1993 reforms is the adoption of the Hospital Fee Schedule. DWC adopted a Fee Schedule to be effective April 1, 1997. However, since some contend that the instructions for the schedule constitute an "underground regulation", it is currently in litigation with a hearing set for May 1997.

Medical Fee Schedules

Mr. Young recently received recommendations from the Industrial Medical Council regarding the Medical Treatment Fee Schedule and the Medical/Legal Fee Schedule.

DWC and IMC jointly convened a meeting with their advisory committees to identify areas of consensus and areas where there are differing opinions. One of the areas where consensus has not been reached is regarding the conversion factors.

They are now working to put it into the format for public hearing.

DWC Claims Unit

Mr. Young said that DWC will be issuing a contract to Coopers and Lybrand to analyze operations of Claims Unit and make recommendations for improvements. They will also conduct a cost/benefit analysis of contracting out the Claims Unit function.

DWC has stopped provider payments from the Uninsured Employers Fund until end of fiscal year unless they get an emergency appropriation.

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HCO Program

Mr. Young indicated that the HCO program was picking up steam. Enrollments have tripled over the last few months to about 40,000. He reports no opposition in the Legislature to eliminate the Department of Corporation's role in this program.

Workers' Compensation Information System

Mr. Young reported that DWC received approval from the Office of Information Technology and the Department of Finance for its Request for Proposals (RFP) for its "Workers' Compensation Information System" (WCIS).

DWC will submit a request to the Legislature for funding in 1997-98. If the funding request is granted, implementation will start in July 1997 and be will be phased-in over three years.

Permanent Disability Rating Schedule Revision

Mr. Young announced that the revised Permanent Disability Rating Schedule (PDRS) was implemented on April 1, 1997. DWC expects the first cases subject to that revision to be filed this summer.

Mr. Young informed the Commission that the software used by the Disability Evaluators is in the process of being updated to reflect the revised PDRS.

DWC is now focused on internal and external training on the revised PDRS, including the Workers' Compensation Judges.

Mr. Young said that DWC was looking forward to what he terms "Phase 2" of the PDRS revision. The findings from CHSWC's study of permanent disability, being conducted by RAND, will provide guidance.

Questions for Casey L. Young

Commissioner Vach stated that the CHSWC Legal Consultant Larry Swezey had suggested having a statute of limitations for the filing of liens. Commissioner Vach asked Mr. Young if he would be interested. Mr. Young responded that he was interested in seeing the suggested language and working with the Commission. It said that it would be nice to get some statutory help.

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Commissioner Steinberg asked for a clarification of the source of the "lien problem". Mr. Young replied that during the "fraud wars", a tactic of the defense side was to separate the lien claim from the rest of the case. The main case would be settled and the liens -- perhaps 8 or 9 liens per case -- would be settled later. This led to a backlog of unresolved liens. DWC, with the assistance of the community and the Board, has now set a policy of settling liens along with the case-in-chief, but that policy is difficult to police.

With respect to the study of the DWC Claims Unit, Commissioner Vach asked if Coopers and Lybrand were going to bring in claims people. Mr. Young said that yes, Coopers and Lybrand had a group who does this.

CWCI Response to Permanent Disability Rating Schedule Revision

Chairman Hlawek announced that Ed Woodward and Michael McClain from the California Workers' Compensation Institute (CWCI) asked to address the issue of DWC's adoption of a revised Permanent Disability Rating Schedule (PDRS), effective April 1, 1997.

Mr. Woodward, CWCI President, stated that he would like to make some comments and express an array of concerns and questions about the Permanent Disability Rating Schedule. These can be grouped into these major areas:

- The process and sequence of events by which the PDRS was developed, adopted and implemented;
- The effect of the revised schedule both in terms of claims administration and the economic impact,
- A lack of adequate information or time to evaluate this change; and
- The construction of the schedule itself. Although highly technical, it raises a number of questions whether the changes made are in fact usually those changes reserved for a legislative body.

Mr. Woodward began with some background on how this happened. From his perspective, it goes back to the authority of the Commission.

Mr. Woodward recalled that in one of its original meetings in 1994, the Commission asked the community if, in its opinion, the Commission was in fact responsible for

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and was given authority for oversight of the workers' compensation system in California. That answer was unanimously, yes. It was stated by virtually all of the community but specifically by the DWC Administrative Director, Casey L. Young.

Mr. Woodward continued: In November 1995, the Commission requested an update on what was going on with respect to the revision to the schedule. The Administrative Director testified at that time that the revision was underway, particularly the update of the occupational variance within the schedule and that DWC was conducting a study on the impact of it. One of the stated goals of the update was, in fact, to assure cost neutrality. The AD stated at that time that their study indicated there would be approximately a 2.5% increase in cost. But he also stated that he was uncomfortable with that and there were methodological flaws to the study that led him to believe the costs could be significantly higher. Specifically, he referred to the fact that the ratings were simple summary ratings that didn't involve complex ratings or litigated cases. At that point, the AD expressed his discomfort and also stated that until he had a firm fix on the economic impact of the study that he would not be comfortable, in fact reluctant, to even go to public hearing and indicated to the Commission that he would continue the study and it would take a number of months before that could be completed.

Mr. Woodward related that Mr. Young indicated he was reluctant to go to public hearing or adopt the schedule because of claims administration problems. It would create potentially additional tracks, particularly if there were subsequent changes within the next one or two years to anything that he might adopt. Mr. Young realized that would be a disservice to the claims administration people. Mr. Woodward said that the AD expressed his desire and his commitment to work with the Commission at that point. In fact, the AD even suggested perhaps public hearings.

Given this background, Mr. Woodward said it was somewhat of a surprise when in fact the DWC announced in September 1996 that it would conduct public hearings. CWCI tried to understand why that happened.

Nevertheless, Mr. Woodward continued, even more disturbing was the manner in which it happened. Along with the notice of the hearing that was to be held in three weeks, was the proposed new PDRS.

Mr. Woodward explained that the proposed PDRS revision was a rather massive change, a very complex document. But DWC included no material that said what was changed. There were no strikeouts, or underlines, or deletions of legislative kinds of information. There was no information that was provided at that time about the DWC study or the cost impact. CWCI had requested the study after the

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first hearing, but had not yet received it. The details on the construction of the revision of the occupational variance was still very unclear.

However, the public was given only three weeks as the time to do an analysis, compare it to the old schedule, find out what had changed, prepare testimony. Mr. Woodward said that, in fact, three weeks is usually what it takes CWCI to schedule a meeting, but they did the best they could. Some claims technicians looked at the new schedule and trying to establish what had changed.

At that public hearing, CWCI testified that it had a number of questions. It appeared to CWCI that the standard disability ratings had been changed, so they questioned DWC on what would be the involvement of the Commission and how would this process work subsequently. CWCI also expressed concern about the economic impact of the PDRS changes as determined by the DWC study; the cursory review of the approximately 150 claims that CWCI looked at suggested that the impact might be greater.

Finally, CWCI testified that the details of the construction of the schedule -- the way the occupational variance was done -- produced some results showing that there was in fact a sort of redistribution of benefits and that injured workers were getting different amounts. CWCI didn't quite understand how that worked and testified that there needed to be more explanation and more information about this process.

Mr. Woodward said that CWCI was again sort of surprised and dismayed when they found out that the revised schedule had been adopted on December 31, 1996. The dismay was because of the representations that had made about the AD's reluctance to do it. Mr. Woodward noted that the Commission had expressed a clear desire to be involved in the schedule revision process, at least on a review basis. And CWCI thought there was a clear direction in the statute to establish Commission oversight of a change of this magnitude.

CWCI's reading of the statute is that it requires the Administrative Director to modernize and update the schedule and it prohibits him from changing the standard disability ratings without Commission approval.² In looking at the statute, CWCI thought it was fairly clear to the legislators or most of us lay people that "changing standard disability ratings" probably meant that if an injured worker is going to get different amounts of benefits, that's a change. But even taking perhaps

² Labor Code Section 4660(d) states: "On or before January 1, 1995, the administrative director shall review and revise the schedule for the determination of the percentage of permanent disabilities. The revision shall include, but not be limited to, an updating of the standard disability ratings and occupations to reflect the current labor market. However, no change in standard disability ratings shall be adopted without the approval of the Commission on Health and Safety and Workers' Compensation. A proposed revision shall be submitted to the commission on or before July 1, 1994."

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a more fundamental analysis, when CWCI looked at the schedule they saw a number of changes -- additions, deletions or modifications that would equate to a change. Certainly, there were a number of disabilities that were new in the schedule, never before seen, some of which are sight, cognitive, vision, jaw, repetitive motion of neck or spine, and virtually all of the lower extremity guidelines. So CWCI had assumed that that was a change that would require approval of the Commission. In any event, CWCI believed that the Commission would have the opportunity to review the revised schedule prior to adoption.

Mr. Woodward went on to say that none of this took place obviously, and CWCI never had a chance to address questions about the impact and about the construction. Mr. Woodward expressed appreciation for the opportunity to raise such issues at this Commission meeting.

Mr. Woodward said that he would like to relate CWCI's concerns when they looked at the revised PDRS. He referred again to the claims administrative area. He noted, any major change of this complexity will produce litigation and produce, in CWCI's opinion, more subjectivity. There's also the complexity that would create more disputes, more litigation, and other types of problems. Also, it's yet another track to be dealt with by claims administrators. And if any changes come about as a result of the RAND corporation study, we will indeed have yet another track or window period to deal with. All of these concerns were recognized by the Administrative Director.

CWCI and its members remain very concerned about the economic impact of the study. Mr. Woodward said that CWCI learned that the 21/2% estimate by DWC was low; the Administrative Director had acknowledged that in terms of the types of cases that were sampled. CWCI also had another concern about the methodology with respect to supplying same case to the Disability Evaluator to rerate using the revised PDRS, particularly when there's a stated goal of benefit neutrality to the changes.

Mr. Woodward said that all CWCI can do is express this concern because frankly they didn't have any information and had not seen the study so they had no way to comment on it. But CWCI was provided with the DWC study just this week. So they have had a couple of days -- certainly not adequate time to inform the Commission a lot about it or even understand a lot about it themselves -- and they looked at one issue. And that was the issue of the possible inclusion of a systematic bias by the rerating methodology. Mr. Woodward said that it turns out in the study, there were 96 cases that weren't rerated by the same rater because the same rater wasn't available to rate them. By looking at these cases, CWCI found that the average increase in that rating was 50% greater than those raters that rerated their

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same case. Commissioner Vach asked Mr. Woodward if the 50% increase was in absolute terms. Mr. Woodward replied in the affirmative.

Mr. Woodward noted that although 96 cases was not statistically significant, the results are what CWCI would have expected. CWCI is concerned that, from the cases looked at, there appears to be a systematic bias towards increasing less arduous occupations in the revised PDRS. Mr. Woodward indicated that CWCI had not been able to document that yet; it will take a lot of work. The Workers' Compensation Insurance Rating Bureau (WCIRB) will have to look at this in its upcoming study of the impact of the revised PDRS. But if true, that would be another potential area of increasing cost. That is also the growing sector of the economy and probably where we'll get more injuries and more ratings.

Mr. Woodward discussed the estimated cost impact of the revised PDRS. Assuming the increase is the DWC-estimated 2 1/2%, multiplied by the approximately 85,000 PD cases, comes out to somewhere around 25 million dollars. When you add the complex litigated cases to this it will increase it somewhere above that. If the systematic bias is in fact there it will further increase it. So CWCI's concerns about the economic impact arise from those kinds of questions and concerns that they have had and still have.

CWCI has also had some concerns about some of the technical processes of constructing the study. Although DWC indicates that they used the Department of Transportation classifications, they used them in some ways that CWCI does not quite understand. Just as an example, the third digit of the occupational variant, CWCI can find no basis for, no definition, and no pattern and yet it systematically does impact the amount of money and the occupational class that would be used.

Mr. Woodward went on to say that CWCI's question really is: Is the ultimate result of this (PDRS revision) to increase the benefits and redistribute them and, if so, how is this done? More importantly, does this cross the line into public policy areas that should have been reserved for public policy makers?

Mr. Woodward asked CWCI General Counsel Michael J. McClain to comment on public policies.

Mr. McClain noted that this morning, DWC AD Casey L. Young suggested that the second phase of his work will consider the difficult policy issues. When Mr. McClain attended the DWC seminar in late February it struck him at that time as he listened to the presentation, that a lot of the difficult policy decisions had been decided by this DEU team who made these decisions. Mr. McClain said that since he has been a part of the workers' compensation debate since 1986, he is therefore familiar with a lot of these contentious issues.

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Mr. McClain went on to say that when the DEU team decides to add additional subjective descriptions of impairment to the California rating system, they exacerbate one of the issues that have been defined by all sides as one of the biggest problems we have in California -- the subjective rating system, which relies on narrative description of injuries. The DEU team did that in several areas and also expanded the use of the work capacity guidelines which does the same thing. We end up now describing in narrative terms what the disability is, rather than measuring the disability and describing an objective measurable replicable term.

Mr. McClain stated that this problem in California has led to a situation now where you can't get two physicians to rate the same medical report within any kind of reasonable range. Claims examiners, two of them rating the same report, wouldn't come to the same decision. Injured workers attorneys are a little concerned about rating the case before DEU does because they're not exactly concerned where it's going to fall. That all translates into litigation. The more your system relies on narrative description, the more disputes you have over what those magic words mean and the more litigation you have.

And in making that decision to go forward in that area, Mr. McClain thinks a significant social policy decision has been made by this DEU team with respect to the distribution of benefits. CWCI suspects there's a significant redistribution of benefits from the laboring and industrial manufacturing end of the spectrum to the service end of the spectrum. That's a significant public policy decision. That's a decision, in Mr. McClain's view, for the legislature.

Mr. McClain observed that the PDRS project team took what they call unscheduled ratings, codified them and put them into the PDR schedule. But the mere selection of what unscheduled ratings go into this schedule and which do not is, in Mr. McClain's view, a social policy decision, a decision that determines how we're going to compensate injured workers in the state of California. And it seems that it should be a legislative decision.

As Mr. McClain understands it, the DEU structured this schedule primarily around the disability factor of strength. There again, limiting the determination of disability in California or centering on that primary factor really shapes how we're going to compensate people in California and it makes a determination of what the primary factor is going to be. And again, Mr. McClain thinks that's a social policy decision.

Mr. McClain continued: The DEU team expressed throughout their presentation that one of the overriding principles of their work was "fairness". They never defined what "fairness" meant but in several areas as they went through the technical presentation, they would say, well we can't do this or we should do this

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because it wouldn't be fair to the injured worker. What you really have in this schedule is the view of how to compensate injured workers in California from a group of permanent disability raters. Our vocational rehabilitation people tell us and tell the Legislature that the only fair way to determine permanent disability in California is to subject the injured worker to a functional test like putting them on a machine that tests their abilities. They would say that's the only fair way -- not a narrative description. Others would say, as many other states have, they've gone to the AMA guidelines description of disability and used that as basis at least, a starting point if you will, for their system of determining permanent disability. And they would say that's the only fair way because that's an objective way. So what you have, he thinks, in many areas already in this schedule, is a determination, a decision, a direction that California's going to go in which was made by this team.

Mr. Woodward said he would like to sum up by saying that first of all, we're surprised we're here and where we are in this process. We don't think we should be. And we certainly don't think we should have gotten here given the process that has been outlined earlier. And we don't think we should have been here without adequate oversight from this Commission in a process we thought was carved by statute. Nor should the revised PDRS have been adopted the day before the state's Office of Administrative Law became another review mechanism. We don't understand why, after two years late and the Commission having a major study to be released in a matter of months that will take a global look at this whole issue as the rest of the community had agreed to, this kind of major complex change is being thrust upon us at this time and we still don't have the answer to that one. "I certainly can assure you that CWC membership is concerned and we at least are not amused. Thank you."

Chairman Hlawek asked if the Commissioners had any questions.

Commissioner Vach inquired how much debate does the Commission want to have, pro and con, in this area. He has a lot of questions that are somewhat technical and somewhat philosophical, but it is up to the Commission at this point to decide where to go with it depending on time.

Commissioner Steinberg said he would like to take a moment to recount where he believes the Commission has come from with respect to the PDRS revision. From time to time the Commission sought to exercise what it thought was its oversight function over the PDRS changes. The Commission was informed at some point by Casey Young that we were reading the statute wrong and that the only jurisdiction we had was oversight only if there were changes in the standard ratings.

Commissioner Steinberg stated that he remembered in one meeting, there was a question about whether we should make any changes in PDR or wait until the

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RAND study is complete and get their input. He asked Casey correct him if he were wrong in his recollection that Casey said let's go ahead with the changes, have them be neutral and not be a problem with the workers' compensation community. Commissioner Steinberg's recollection is at one meeting he suggested that even those changes that we might want should be brought back to the Commission before they were adopted.

Commissioner Steinberg said that he recalled saying something to Mr. Young to the effect well let us know what the changes are when they're drafted. He also raised a concern about the elimination of certain rather strenuous occupational variance at the high end of the schedule. Mr. Young's response essentially was, well there didn't seem to be that much concern or dispute in the community. Commissioner Steinberg went on to say that frankly, when the AD did go ahead and publish the PDRS changes, he did hear much from the community arguing over the issues of changes at all until CWCI's subsequent exchange with Mr. Young.

Mr. Woodward responded that he did not think anybody really understands this change yet. CWCI tried very hard as much as they could in the three weeks before the public hearing with a complex issue and very little information. Mr. Woodward does not think the community to this day has the information or understands the implications. Mr. Woodward certainly didn't at that time but thought the community would have another opportunity to comment.

Commissioner Steinberg said that he understood Mr. Woodward's point but whether he agrees or disagrees with it doesn't make any difference. All Commissioner Steinberg was saying, on behalf of himself if not the entire Commission, is that CHSWC did its level best to get involved in this thing and there just weren't legislative authorities from the Administrative Director's standpoint for us to do so. CHSWC gave the PDRS revision as much air as it could in its meetings and Commissioner Steinberg is not sure what CHSWC needs to do at this point absent Legislative direction.

Chairman Hlawek asked if there were any other comments from the Commissioners. He said that he appreciated the seriousness of CWCI's concern. As Commissioner Steinberg correctly said, the Commission has engaged in some lengthy discussion about this issue, but today is probably not the day for CHSWC to take this up in view of the agenda we have for today's meeting.

Chairman Hlawek suggested that the Commission take CWCI's comments under submission. He directed Ms. Baker to ensure that was reflected in the minutes. He announced that the Commission will look at that at the next meeting and will take a motion for any additional action the members might want to take on that.

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Commissioner Vach observed that at the time that the Commission brings this to a conclusion additional testimony may be needed from any of the parties. Chairman Hlawek suggested that when the Commission receives the draft minutes from this meeting, they will have a discussion with the staff to decide at that time whether we need to have people come back.

Report on Illegally Uninsured Employer Project

Chairman Hlawek called upon Executive Office Christine Baker to report on the Commission's Illegally Uninsured Employers Project.

Ms. Baker related that the Commission has developed an issue paper on its project to identify and bring into compliance various employers who are illegally uninsured for workers' compensation. By reducing the number of illegally uninsured employers, this project aims to provide proper workers' compensation coverage for workers, to reduce the cost to the Uninsured Employers Fund and the state's General Fund, and to level the economic playing field for insured employers.

As with all Commission projects, the Commission staff, in cooperation with the University of California, convened an advisory committee composed of interested persons from the workers' compensation community. In addition, Ms. Baker said that CHSWC staff met with WCIRB to discuss data coordination and matching and had several meetings with staff in various DIR divisions including DOSH, DLSE, OD Legal, and the DWC Claims Unit. Staff also met with the Chairman of the Fraud Assessment Commission and representatives from the Department of Insurance.

Ms. Baker relayed two of the major findings in the uninsured employers issue paper:

- It is rare that an uninsured employer is identified prior to the time a claim is filed against the uninsured employers fund, and
- Due to the delay in identification of uninsured employers, remedies and corrective actions become more difficult.

To address these and other findings, the issue paper includes the following recommendations:

- Increase notification informing employers of their obligation to secure workers' compensation coverage

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- Conduct three pilot projects to identify employers who are out of compliance by matching records.
 - Pilot 1 would match EDD records with experience-rated employers without current coverage on record with WCIRB.
 - Pilot 2 targets industries with high rates of noncompliance and high costs to the Uninsured Employers Fund, such as construction, transportation, restaurants, and auto truck repair.
 - Pilot 3 targets new employers. This pilot will test methods of improving new employers knowledge of the need for compensation coverage and identifying new employers who willfully avoid compliance.

These pilot projects would run for a one year period at the end of which final recommendations for possible permanent funding and implementation could be made.

Ms. Baker related that they have attempted to obtain funds for these pilot projects from the Fraud Assessment administratively through the Fraud Assessment Commission. However, this week DOI notified the Commission that in their attorney's opinion, the Fraud Assessment Commission is restricted by statute to use those moneys exclusively for the designated purposes. CHSWC's legal consultant also advised us of that.

Ms. Baker stated that the Department of Insurance strongly believes that the Commission's focus to identify, notify and bring illegally uninsured employers into compliance makes good public policy sense. DOI would like to work with the Commission to develop alternative ideas for funding the pilot projects. They have suggested that DIR, DOI, the Commission, WCIRB and EDD reconvene to discuss funding alternatives.

The Commission staff also explored other possible legislative actions, including proposals

- To make the willful failure to secure workers' compensation punishable in the same manner as workers' compensation fraud,
- To authorize the DIR Director to assess the penalty of \$1,000 per employee anytime an employer is discovered to have been uninsured for more than one week,

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- To require the posting of the name of the employer's workers' compensation insurer at all job sites where more than minimal work is being performed, and
- To extend a general contractor's responsibility to insure that sub contractors have secured payment of compensation.

With respect to these legislative proposals, Ms. Baker said the Commission is still receiving comments and concerns from the community. Some believe that the legislative proposals should be considered after the pilot projects have been completed. Others believe that it is the regulator's responsibility, or DIR's, to obtain funds and handle the problem of uninsured employers without the need for changing fraud statutes.

Comments from the Department of Insurance

Ms. Baker introduced Keith Newman from the Department of Insurance (DOI) who would like to make a comment with regard to this project.

Mr. Newman thanked Ms. Baker and stated that she had accurately and adequately reflected their conversation. The Department of Insurance strongly feels that the desired objective of identifying uninsured employers and insuring that they comply with the law and insure their employees is good public policy and would be desired by them. He said that DOI would like to participate with the Commission staff, with the Department of Industrial Relations, and the others named in attempting to identify ways to put such a pilot project in place and, if that is successful, to assist in identifying ways in how to adequately fund whatever methods would be called for as a result of that. Mr. Newman reiterated that he was here to indicate support and willingness to participate. He went on to say that it is correct that DOI's legal staff, which serves as the advisor to the Fraud Assessment Commission (FAC), has advised that under the existing statute the FAC is precluded from using the funds for other than the stated purpose which is the investigation of insurance fraud.

Commissioner Vach asked who would object to using the FAC funds to deal with illegally uninsured employers. Mr. Newman replied that he did not know, but perhaps it might reduce the ability to fund investigators addressing current insurance fraud -- DOI's workload now is huge. Perhaps District Attorneys would object if it impacted the local assistance program that passed through 50% of the funds. But it is illegal and DOI have so advised the Commission members.

Commissioner Vach noted that the definition of fraud, at least in the Labor Code that CHSWC normally works with, is any misstatement, material misrepresentation

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to obtain or deny benefits. Using that definition, an uninsured employer who denies benefit by stating that he has insurance, has committed fraud.

Mr. Newman responded that it was his understanding that the statute that established the Fraud Assessment Commission defined what sections of law the funds would go to, and they included the insurance fraud sections included in the California Insurance Code and the Penal Code. They do not address Labor Code violations, and he thinks that would make the difference. In his understanding, that's part of what would be desired in the pilot project. And again Mr. Newman stated that DOI would like to participate and he has told Ms. Baker that he and his staff would work with her and the others involved to attempt to find a way to fund such a pilot project. But he did not have a definitive answer at this time.

Commissioner Rankin asked if Mr. Newman had a chance to look at the proposed legislation on this matter. Mr. Newman replied that he had not.

Commissioner Vach said that a discussion he had here earlier with Mr. Joseph Markey indicated that the California Self-Insurers Association (CSIA) was concerned about DOI's interpretation. It seems a real shame that we have to go through some extra gyrations to fund this project. There is not a lot of money involved and to have it impact what he thinks is a very worthy project because of that concern, really bothers him.

Mr. Newman replied that he felt that its a very worthwhile project. He is in a position where he could not offer advice to the Fraud Assessment Commission members which he had been told would be illegal. He didn't make the law, but does have to live by the law. From what the attorneys told Mr. Newman, the law is very specific in what it can be used for and he thinks he would be remiss in his duties if he gave advice to the contrary.

Chairman Hlawek stated that he understood Mr. Newman's comments to the effect that he believes this is a worthy project and that he will try to work with CHSWC to obtain other funding.

Mr. Newman concurred. He said that this project has gone fairly rapidly and DOI has simply not had time to explore different ways of coming up with funding. There might be ways but he simply is not aware of those at this time. If DOI can do that and if it is legal is his only concern. DOI believes in the project, thinks it is very worthwhile and would just like to work with the staff and attempt to find ways to secure funding.

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Comments from the California Workers' Compensation Institute and the State Compensation Insurance Fund

Ms. Baker announced that Edward C. Woodward, President of the California Workers' Compensation Institute and Geri Madden, Government Affairs Officer for State Compensation Insurance Fund, would like to comment on the Illegally Uninsured Employers Project.

Mr. Woodward said that this has been one of the more interesting projects that he has participated in in a long time. It is one of those rare chances when you do learn an awful lot about parts of the world that you've never been exposed to before. The thrust of the Commission to reduce the population of illegally uninsured employers is right on track. The project has really progressed in a very positive manner and we learned an awful lot of things about things that weren't being done that seemed so logical to do.

Mr. Woodward disclosed that a lot of people were surprised that notification to employers that they have obligations to have insurance does not currently occur. The EDD should notify these people immediately. There should be some kind of follow-up mechanism, there should be some kind of cooperation between the WCIRB and the EDD. Many of his members wonder why a project is needed to make that decision. And that sort of response its been very interesting -- the thrust of this project is like why didn't you think of this before? So given that the response, why don't you just go ahead and do it? Why do you need to study it? So he believes that the members are mostly in support of the notification, identification, follow-up systems. CWCI certainly wants to encourage the parties to follow through with some of these ideas.

Mr. Woodward went on to commend the staff for bringing all the right people together and introducing them to each other and saying "why don't you talk to each other and coordinate your efforts and there's all kinds of things that you can do". The community has a lot of resources that are capable of being focused on this effort. He expressed hope that the intent is to proceed with the projects if CHSWC ever gets funding. If not, then perhaps some of those suggestions could be implemented anyway.

Mr. Woodward indicated that he and Geri Madden from SCIF had a couple of concerns. These include the proposal to extend the general contractor's liability to a licensed subcontractor and the issue of criminal sanctions for employers. He said that if regulatory sanctions are used effectively, they can be very quick, they can be very direct, and they can be very punitive. You can lose your business, you can lose all kinds of things. When the criminal side of this is involved then due process is involved, and they are concerned that it would stay the regulatory action.

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Geri Madden said that when "willfully uninsured" is added to the fraud statute we are then moving what from what is currently a regulatory issue to the criminal side. Informally, the DIR director has quite extensive authority to seek civil action -- everything from immediate regulatory action to civil action, including stop orders and foreclosure. Ms. Madden went on to say that if the OJ trial taught her anything, it taught her that you can't do both of those together. So one is going to have to compromise the other. Adding criminal sanctions would compromise a civil action in the regulatory arena that's focused toward basically a public policy of finding these uninsured employers and getting them insured. She suggested that CHSWC study it more, address those public policy questions and determine what it wants to accomplish and if it wants to go to criminal action and stay the regulatory action.

Commissioner Steinberg remarked that it seemed to him what we want to accomplish is to get the injured worker paid and get that obligation off the back of the Uninsured Employer Fund (UEF) as quickly as possible. He also inquired about the point Mr. Woodward addressed regarding the possibility of passing liability for uninsured employers in a construction situation with a general contractor or homeowner.

Mr. Woodward explained that the status of the current law is that if an unlicensed independent contractor or his employees are injured, the liability accrues to the person that's employed him. That's not the case if he's a licensed contractor -- that's the "independent contractor" status under the current law as he understands it. "I'm not an attorney but I never go anywhere without one".

Commissioner Steinberg went on to say that he agreed with Mr. Woodward in that he is not sure a sophisticated study needs to be done to tell us what needs to be done here. Mr. Woodward responded that he has, as everyone knows, a normally very cautious, conservative constituency, so it sort of surprised him that their reaction was "We're not doing that? No kidding!"

Comments from the United Taxicab Workers

Ms. Baker announced that Mark Gruberg, Chair of the United Taxicab Workers, would like to comment on the Illegally Uninsured Employers Project.

Mr. Gruberg said he is a cab driver in San Francisco, and Chair of the United Taxicab Workers, which is a cabdrivers association affiliated with Communications Workers of America. He wanted to offer the Commission a case in point for this project -- the cab industry with some 30,000 cab drivers in the state of California. The National Institute for Occupational Safety and Health issued a report last June

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entitled "Violence in the Workplace" which says that taxicab services have the highest rate of work related homicides during the three year period 1990-1992. That rate was 41.4 per 100,000. This rate was nearly 60 times the national average rate of work related homicides of 0.70 per 100,000. The next highest figure was for liquor stores at 7.5 for 100,000 -- less than 1/5 the rate of cab drivers. There is also a very high rate of accidents that cab drivers get involved in.

Mr. Gruberg said that there is obviously have a problem and it's compounded by the fact that cab drivers are low income workers who rarely have their own insurance or savings to tide them over an accident or injury from criminal act. So they do very often fall back upon public assistance when they are not covered by workers' compensation. In 1991, a court case was decided by the Court of Appeals for the first district which includes San Francisco and involved his cab company, Yellow Cab of San Francisco. It decided that cab drivers in my situation -- the situation that most cab drivers in San Francisco and most others in the state -- are in fact covered by worker' compensation. They are employees for that purpose. The response of cab companies was basically to ignore this decision, flout it, and refuse to cover their drivers for workers' compensation. He held up a notice he received last year after he broke his thumb in a cab accident. The notice stated to the effect that "you are not entitled to benefits because you are an independent contractor", His claim is currently on appeal.

Since that time, Mr. Gruberg continued, there has been another court case in San Francisco which has confirmed what the case in 1991 said and the judge in the Superior Court in San Francisco has ruled that the four cab companies are guilty of unfair, unlawful or fraudulent business practices for failure to cover drivers for workers' compensation or unemployment insurance. And because these cab companies are now under the gun, it seems like they might be willing to come into compliance. We're watching that. But there are some other cab companies in San Francisco that were not involved in this lawsuit and we don't know if they are in compliance or not or will be in compliance. He doubts there are very many cab companies at all are in compliance with these court decisions. This is a prime area for identification and notification and the other objectives of this project.

Mr. Gruberg also addressed the question of whether criminal fraud charges should be applied to these situations. He said that it seems tremendously incongruous to him that an employee or worker who is caught cheating the system can go to jail and have a criminal charge logged against him, whereas an employer who might be employing hundreds or thousands of workers and commits a fraud would not. So it seems completely out of kilter and makes no sense not to have criminal penalties in this case.

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Comments from the California Applicants' Attorneys Association

Ms. Baker announced that Lloyd Rowe of the California Applicants' Attorneys Association would like to comment on the Illegally Uninsured Employers Project.

Mr. Rowe said that he was somewhat reluctant to come down and say they agree with Mr. Woodward, but they in fact do agree with Mr. Woodward. He said that the Commission staff did a very nice job of bringing some folks together.

He also thinks the liability issue is interesting because, as Commissioner Steinberg said, what we're trying to do here is to get an injured worker paid and to get these employers to either get insurance or pay for it. If you take private money and cause a dispute, he believes that that is favorable to taking state money and not getting it back.

Mr. Rowe also addressed the issue of potential criminal penalties. He believes there was testimony at the last CHSWC hearing that some of the district attorneys feel that not being insured is a fraud and that it would be prosecuted if it had suitable public relations value -- if they could bring in a group of 20 uninsured employers handcuffed together and say "Look what we've done". Some of them believe that the existing law provides for that and they would possibly pursue it if it were in fact a felony. He thinks that is not inappropriate. In 20 years of representing, some uninsured employer injured workers, Mr. Rowe said he never had an employer come in and say "I didn't know I needed insurance". They say "I couldn't afford it", "I didn't want to buy it", "I didn't get around to it", all sorts of reasons. But he has never had one say "Gee, I didn't know". They all knew, they just didn't bother. So he does not think that the fraud penalties or the criminal penalties being raised to a felony would be in any way inappropriate.

Commissioner Steinberg asked Mr. Rowe about shifting the responsibility up the line to general contractors, owners and so on.

Mr. Rowe replied that he thought that would be preferable to isolating somebody because of the technicality of a license and then making the state pay for it or making the injured worker do without. That's the true tragedy in these cases as he sees them -- people who try to go through the uninsured employers fund system, people with catastrophic injuries.

Comments from the California Manufacturers Association

Ms. Baker announced that Willie Washington of the California Manufacturers Association would like to comment on the Illegally Uninsured Employers Project.

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Mr. Washington said that he participated in the group looking at the issue of uninsured employers and one of his concerns is that California is a very, very large state and that opportunities of having uninsured employers are magnified just by sheer size. He believes that the possibility that the problem could totally and completely be eradicated is probably not likely, no matter how much money is put into it. He thinks that CHSWC ought to go into this with some idea of trying to mitigate, but not completely eliminate, the problem.

Mr. Washington was also concerned about the proposal to place liability on the general contractor. He asked what the inducement would be for the person who commits a violation to have insurance if he/she knows that he's already covered by the employer.

Commissioner Rankin observed that perhaps a contractor could put language in the contract with that subcontractor to the effect that if indeed a subcontractor doesn't at one point or another have coverage for workers' compensation and if the contractor ends up having to pay the bill that that subcontractor will owe the contractor for that and perhaps even pay a penalty. He said that what this proposal would do would simply extend that duty of the general contractor to making sure that the subcontractor had workers' compensation insurance.

Mr. Washington explained that the problem is that a contractor has no mechanism in place to check every month to see if the subcontractor's insurance remains in effect. He said it would take an inordinate amount of time and difficulty of trying to keep up with something of that nature since workers' compensation is just one of the things that is involved in the workplace. He does not want the problem solved on the back of the employer.

Chairman Hlawek thanked Mr. Washington and noted that this is a subject where there are obviously some strong feelings on both sides of the issue.

CHSWC Vote

After some discussion, Commissioner O'Hara moved that the Commission

- explore the feasibility of alternate funding for implementation of the pilots and whether or not they want to implement the pilots.
- convene a round table to review the legislative proposals and work through the technical difficulties

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- introduce the proposed bill as modified by the round table discussions

Commissioner Steinberg seconded, and the motion passed unanimously.

Ms. Baker asked if she could make this report a public document and Chairman Hlawek answered in the affirmative.

Report on Industrial Medical Council Activities

Chairman Hlawek called upon Dr. Allan MacKenzie, Executive Medical Director of Industrial Medical Council to present an update on IMC activities.

Dr. MacKenzie thanked the Commission on behalf of the Industrial Medical Council for the invitation to speak on some of the progress the council has made on behalf of California's injured workers.

Dr. MacKenzie then said: "I'm not certain that it is true that when EF Hutton talks that everyone listens. But I can say to you that when the Commission speaks the IMC listens and furthermore, in fact, the IMC acts."

Dr. MacKenzie related that at the Commission's meeting in September 1996, two points of constructive advice were offered which he took back to the Council. The first dealt with Commissioner Vach's perception of the importance of the UCLA Study on Causation; Commissioner Vach had stated that it was the only practical objective tool that could be used to determine causation. The take-home message from the Commission, then, was that the IMC should make better use of this causation tool and it has. The problem with the study was that it was highly theoretical and not much use for the average qualified medical evaluator. So the IMC staff reworked the original paper and they also got back to the author Dr. Phil Harber and obtained a summation of his study. The next issue of the IMC's Physician Guide will include a synopsis of that study. In there the IMC will include a synopsis of the different types of causation, the means of establishing causation, and how and where the study can be obtained.

The second point the Commission made, Dr. MacKenzie continued, was that the IMC should offer a no frills, boiler plate, core content, continuing education course for treating provider physicians, of whom there are some 120,000. The feeling was that this course should be delivered at IMC's cost and that it should serve as a benchmark or standard template for all future comparable educational courses. At the last meeting of the council, they approved in principle that the IMC will sponsor a one day Educational Conference for Treating Physicians and that it would be held

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on Thursday, November 20, 1997 -- one day prior to the Commission's Permanent Disability Summit. Council members were reminded that they have a vested interest in the RAND study material being presented on November 21st and in the success of the PD Summit Meeting. Dr. MacKenzie thanked the Commission for giving IMC oversight and urging them to do the right thing.

Dr. MacKenzie said that he was delighted to be able to inform the Commission that "the most contentious of Treatment guidelines -- for the lower back", have been unanimously adopted by the IMC and were submitted to the Office of Administrative Law for review on the 21st of April along with the Treatment Guideline for the knee. All of the remaining treatment guidelines, the shoulder, elbow, hand and wrist, are in the final stage of rulemaking and Dr. MacKenzie hopes that they'll be ready to make the trip up to OAL next month.

Dr. MacKenzie went on to say that he and the DWC Administrative Director convened a Fee Schedule Advisory Task Force, comprised of approximately 50 representatives from the major stakeholders in the community who met approximately every three weeks for nine months. This work was facilitated and shared by the Industrial Medical Council. He considered it important to say that this was basically a good process doing important work. The task force has completed its work on time and made its recommendation on the Official Medical Legal Fee Schedule to the Administrative Director.

Dr. MacKenzie then turned to the IMC's progress in complaint tracking and fraud investigation. He said that part of the IMC mandate is to maintain a core of approximately 5,000 QMEs whom they educate, examine and certify, appoint and reappoint as well as regulate. During the last 18 months, Dr. MacKenzie said the IMC has gone from the status of a start up agency to a full service regulatory body capable of performing sophisticated fraud investigations in the field. He called upon Suzanne Marria, Counsel to the Industrial Medical Council, to discuss this subject further.

Ms. Marria greeted the Commission and explained that since she missed the fraud hearing, she wanted to highlight some of the topics that she had planned to testify on that day. She provided copies of the written testimony answering some questions that were forwarded to the IMC from the Commission.

Ms. Marria said, as Dr. MacKenzie just indicated, this has been a pivotal year for the investigations unit of the Industrial Medical Council. Just a year ago IMC was able to hire a Senior Special Investigator. She said they were quite fortunate in hiring Tom Brannen who has over 30 years of experience in criminal investigations for the US government, in the military sector, and has worked for county government as well as private investigative agencies. Mr. Brannen has investigated crimes ranging

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from petty theft to capital crimes. He's quite an experienced interrogator and he's produced some very important investigations that the IMC has been able to refer to prosecuting agencies.

Ms. Marria continued by saying that another important aspect of how the IMC has moved from essentially a paper investigation system to an in-field investigation system is including Dr. Anne Searcy on the field investigations team. That has multiple benefits because not only does Dr. Searcy bring her medical knowledge but she has been the person in charge of the IMC project reviewing the quality of QME reports.

In addition, Ms. Marria said that IMC has worked very hard on coordinating their efforts with other enforcement agencies. They have attended the Fraud Advisory Committee meetings that were held by the Department of Insurance; those meetings have been suspended for the time being but in that process IMC was able to make contacts with a number of different agencies. They have worked with Medi Cal fraud investigators because sometimes the IMC receives tips involving QMEs that need further investigation. IMC has been invited and will attend the U.S. Attorneys Health Fraud Advisory Task Force meeting. We've held meetings with licensing boards to talk about how we can better coordinate our efforts, including the Medical Board, the Board of Chiropractor Examiners, and the Psychology Board. IMC is also working on a training session for the Medical Boards' complaint intake personnel so that they know how to identify the cases that should be referred immediately to the IMC for further investigation.

Ms. Marria went on to say that the IMC has referred cases -- that is, very full investigative reports with supporting documents, witness lists, and recommended charges -- to District Attorneys offices in six counties and we provided on site support by going to their offices and offering to help assist in the investigation of the witnesses.

The IMC has also expanded its complaint tracking system to be a little more sophisticated. They expanded the complaint-type categories so that IMC will be able to see the trends are and referrals to investigation. Since the last meeting IMC has terminated two more QMEs from the list -- One because his license was revoked by the medical board for a variety of problems including substandard care, and another who pled to a charge of insurance fraud involving his practice. Both the doctor and the worker in that case were prosecuted and convicted. Also, a psychologist was suspended because his license was revoked for sexual improprieties. That case is pending before a Superior Court on a writ so the IMC has suspended his QME status pending the outcome.

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Ms. Marria summarized by saying that the IMC investigations unit is growing, they are getting tips on larger and more complex cases, and with the assistance of the Senior Special Investigator the IMC has been able to go out into the field and really put together the kind of investigation the prosecuting agencies need to take some of these cases.

Ms. Marria then stated that the IMC's major hurdle and difficulty is the lack of peace officer status for investigators. The IMC is the only licensing body in the state that does not have peace officer status for investigations. And as recently as last week, one of the District Attorneys that met with the IMC and said to them: "I want you to go over and meet these people from the Department of Insurance Fraud Investigations Unit to talk about this case. However, I think you should know that they probably aren't going to share any information with you because you're not a peace officer". The IMC keeps running into this over and over again where there's information that would help them in developing of part of this investigation but they can't get to it because of the lack of peace officer status. Ms. Marria said that the IMC would welcome any assistance from any interested parties in changing that.

Ms. Marria also announced that the IMC would like help publicizing its HOT LINE: 1-800-444-1091. The IMC will accept calls from anyone and the call can be anonymous. The instructions to the line specify that IMC needs enough information in order to proceed with a follow up on the tip. An anonymous call is fine but enough detail must be provided so that the IMC can do something. Ms. Marria also provided information sheets.

Commissioner Vach asked Ms. Marria, in addition to the 800 line, how does the IMC request the community to communicate about an issue of impropriety. Should they call the IMC in order to prepare a semi SIU type of process?

Ms. Marria replied that the IMC does not use the SIU type of forms. Essentially, the IMC says "first call us and talk to us and then ask that there be a written complaint, but there is not a particular form. The IMC just wants the person who's making the complaint to put down on paper enough details and what the basis of the complaint is so that the IMC can move forward.

Commissioner Vach if the IMC performs audits on a random basis to ensure that the Qualified Medical Examiners are meeting those qualifications. Ms. Marria replied that the IMC has started to look at that but they do not have a system in place right now for a random check.

Commissioner Vach noted that issues over medical bills may be causing a lot of the liens on WCAB cases. He asked Dr. MacKenzie if the IMC would be willing to take on some of that responsibility to settle bill disputes because now DWC judges

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essentially micromanage what are really medical billing issues. Dr. MacKenzie replied in the affirmative and referred to Suzanne Marria. Ms. Marria stated that there have been some discussions in progress with DWC on this subject and she thinks everyone appreciates the concern.

A member of the audience wanted to raise the issue of immunity when information is transmitted anonymously to the IMC. Ms. Marria thanked him for the comment.

Chairman Hlawek expressed the Commission's appreciation to Dr. MacKenzie and Ms. Marria and called for a five minute break.

Vocational Rehabilitation Study - Preliminary Findings

Ms. Baker requested that Frank Neuhauser of the University of California Berkeley present an update on the data collection and findings of the Commission's Vocational Rehabilitation study.

Mr. Neuhauser noted the Commission wanted to assess the impact of the 1993 workers' compensation reforms on the Vocational Rehabilitation program: Did these reforms save employers money and how did the reforms impact the seriously injured workers that are QIW? Mr. Neuhauser said that the study team has some information now to address the question of whether the reforms saved employers money. But the study is still a little premature on being able to address the impact on injured workers.

Mr. Neuhauser referred to a handout he provided to the Commission members and pointed out that the total cost of the vocational rehabilitation benefit for the accident year 1994 (which is their estimate of what the total cost of the benefit will be for accidents occurring in that year) has dropped about 50% since 1993 and represents a savings of about 280 million dollars. There was a 27% drop between 1992 and 1993 and of a similar magnitude dollar-wise. But the sources of these two changes were substantially different.

Mr. Neuhauser explained that at least half of the change between 1992 and 1993 was driven by a decline in injury rates and claim rates. However, 2/3rds of the decline between 1993 and 1994 resulted from a decline in the cost of various types of cases within the system, including alternate modified work, vocational rehabilitation plans, and declinations. And 1/3rd of those savings between 1993 and 1994 comes from a change in the mix among those three types of cases.

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Mr. Neuhauser went on to say that the cost for the average case has dropped by about 45% between 1992 and 1993 from \$13,000 to \$7,000. Most of this is due to the decline of each kind of case, but some is due to the change in the case mix. If one of objectives of the reforms was to eliminate the cases that cost over \$16,000, then that certainly has been accomplished. There remain only a very small number of cases with costs above the cap. Mr. Neuhauser noted that an issue was raised at the time this legislation was passed as to whether or not the \$16,000 cap or ceiling on the costs would also be treated as a floor. From the data, he does not think that this occurred.

Mr. Neuhauser then noted that there has been a moderate increase in the number of alternate modified work offers that are accepted by injured workers, and a near doubling of the number of case that end in a declination -- either a formal declination or an alternate modified work offer is not accepted.

Mr. Neuhauser continued by saying there does not appear to be a very large impact on the amount of training that workers are receiving within the plans despite the imposition of a cap. Furthermore, at least to present, there has not been a substantial impact on the placement services offered by qualified rehabilitation representatives within plans.

Ms. Baker informed the Commission that data is available on this Vocational Rehabilitation project to continue the analysis. Since the University has already made the major investment in developing the methodology, it would cost only an additional \$15,000 to expand that analysis for one year.

Commissioner Rankin made a motion to extend the Vocational Rehabilitation study for another year at a cost of approximately \$15,000. The motion was seconded by Commissioner O'Hara and passed unanimously.

Chairman Hlawek thanked Mr. Neuhauser for the update and asked Ms. Baker to discuss additional Commission studies and projects.

Commission Studies and Projects

Ms. Baker stated that, in addition to the Vocational Rehabilitation and the Illegally Uninsured Employer studies, the Commission has several other projects under way.

She reported the following:

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Permanent Disability Study

The permanent disability study is being conducted by RAND and the Commission is assisting in the acquisition of the data and other needed information. The study encountered some delays in obtaining data from EDD and as a result the project time line has changed slightly. RAND will meet with the study advisory committee in August and produce a final report by September. RAND will present its findings to the Commission at the September meeting and the Commission will then hold its summit conference on permanent disability on Friday, November 21, 1997 in South San Francisco.

Medical/Legal Evaluation study

Last July, the Commission released the first report on its study of the impact of the medical legal reform. The study has been continued for another year and a new report is expected at the June 1997 meeting.

Incomplete Physician Report project

The Commission has contracted with UC Berkeley to study what many disability evaluators report as their largest problem -- the poor quality of the reports that they can't rate. The study is being conducted by the Survey Research Center will determine the nature and magnitude of the problem ascertain who is producing incomplete reports and why and develop quantitative analysis, provide recommendations for improving the quality of the reports, and calculate the cost benefit obtained from the system. The study is expected to be completed by mid-1997.

Workers' Compensation Information Prototype project

CHSWC contracted with the Labor Occupational Health Program for the development of prototype instructional written materials and a video on the workers' compensation system. The Commission is working with DWC and an Advisory Group from the workers' compensation community to provide recommendations for such materials. The Advisory Committee has met several times and is in the process of reviewing proposed fact sheets and video script. The project is expected to be completed by the end of the year.

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Ms. Baker said that the Commission may wish to consider sponsoring a one day "Workers guide to Workers' Compensation" educational conference in May of 1998, at which time this prototype information may be presented and distributed to the community and the public. The existing Interagency Agreement with LOHP could be extended and finalize this fiscal year. The costs are estimated between \$30,000 and \$35,000. Commissioner Rankin so moved, Commissioner O'Hara seconded, and the motion passed unanimously.

Safety and Health Education Video for Young Workers

The Commission has contracted with UCLA Labor Occupational Safety and Health Program to produce a safety and health education video for young workers. The video, accompanied by a discussion guide, will be used by teachers in education and career planning and integrated social study classes which all 9th graders must take. It will also be used in classes such as social studies, English, health, history, and vocational education. The video and guide will be distributed at no cost to all 49 high school in the Los Angeles Unified School District and will be made available to other school districts upon request. The product is expected to be completed by July of 1997.

Industrial Disability Retirement Issue Paper

The Commission is overseeing the development of an issue paper regarding the interaction among industrial disability retirement determinations in various systems. Disability definitions and methods of determining disability differ among the various compensation systems including the workers' compensation permanent disability, State Disability Insurance, Public Employees Retirement System, Social Security Disability Insurance, and Supplemental Security Income. The issue paper is expected in September of 1997.

Interaction of Workers' Compensation and State Disability Insurance

The Commission is overseeing the development of an issue paper to address two important issues that have been raised concerning costs imposed on the State Disability Insurance system by occupational injuries and illnesses. The issue paper dealing with extent to which resources are being shifted from one system to another is due in mid-1997. Ms. Baker reported that the project team is still trying to obtain data from EDD so there is a slight delay at this point.

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"Carve Outs" - A Study of Alternative Workers' Compensation Programs

The Commission is carrying out an evaluation of collectively bargained workers' compensation programs in the California construction industry, also known as "carve-outs".

This independent, outside study will take an important first step for the long term evaluation of the effectiveness of alternative workers' compensation programs. The identification and establishment of baseline measurements will form the foundation for a nationwide study of such programs.

The first phase of this study is to describe the carve-out programs that have been established and to determine the acceptability of these programs through interviews with unions and employers, program administrators, workers who have incurred claims, employers who are covered by the programs and service delivery providers engaged by the programs. This first phase is scheduled to be completed in December 1997.

Commissioner O'Hara commented that he has been noticing some correspondence criticizing the Commission for doing this study from people who are normally advocates of workers. Although he has missed some meetings due to illness, he does not remember any criticism coming from the applicants' attorneys when the Commission first brought this up. When he looked through the CHSWC meeting minutes, the motion to engage in this project passed unanimously. He said he guessed the criticism is that 60% of the cost of it is being funded by various groups that are advocates of the Carve-Out. He asked for confirmation that the study is being done by UC Berkeley.

Ms. Baker so confirmed. She went on to explain that the organizations offering to contribute to the cost of the study have minimal contact except for being part of the project Advisory Committee. The project team works independently from the funding sources.

Commissioner O'Hara stated that he did not understand why the Commission is being pounded because of this and he heard that there has been some criticism of the issue at the Legislature. He asked if these issues had been raised at Commission meetings. Ms. Baker replied that the applicants attorneys may have made some comments at the last meeting, but these were made after the Commission voted for and proceeded with the study. She reported that they are trying to work with the Applicants Attorneys Association and bring their comments to the study group and try to address their concerns. CAAA is having an opportunity to voice their concerns to the study group.

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Commissioner Rankin asked if the Commission had adequate funding from the state, would there have been any question of doing this project without any outside funds. Ms. Baker responded that the Commission would have done this project using its own funds.

Commissioner Rankin agreed, saying he did not think there was any question about the Commission undertaking the study because the members all agreed to it unanimously and now the criticism has been that CHSWC plans on using outside funds to conduct this study. He further noted at the same time that some of those who apparently are criticizing the Commission for using outside funds are also trying to deny it more funds in the Legislature for next year.

Profile of DWC District Office Operations

Ms. Baker noted that the Commission members have received the preliminary draft report on selected DWC district offices, including suggestions for legislative remedies for the handling of lien claims filed on workers' compensation cases. From information obtained in that draft report, Commission members may wish to select various offices in which to conduct a walk through and evaluation of procedures and operations. She asked that the Commission advise of any further action that they wish Commission staff to undertake.

Chairman Hlawek if there were anything Ms. Baker would suggest at this time. Ms. Baker suggested that the Commission provide the opportunity for the staff to continue the study as needed. The staff does get calls telling informing of problems in particular offices. She said there were a lot of good things that came out as a result of the Commission doing the study. Chairman Hlawek suggested that the Commission take that under advisement between now and the next meeting.

CHSWC Hearing on Anti-Fraud Activities

Ms. Baker announced that Commission members have received a preliminary draft report of findings and recommendations from the Commission's hearing on the anti-fraud activities held in February. She indicated that staff were having trouble with the overnight delivery service and consequently was not sure the reports were received in a timely manner.

Chairman Hlawek suggested that the Commission wait for the next meeting and discuss it at that time.

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Permanent Disability Summit

Ms. Baker reported that Commission staff has begun preparation and planning for the Commission's upcoming Permanent Disability Summit conference on the findings from the RAND study. The Summit is scheduled to take place on Friday, November 21 at the South San Francisco Conference Center near the San Francisco Airport.

Chairman Hlawek explained that originally the Commission had discussed holding the Summit during September or October, but a suitable location could not be found until November.

WCRI Study

In addition to these Commission projects, Ms. Baker announced that the Commission has been invited to participate in the funding of a project to be conducted by the Workers' Compensation Research Institute.

This new research program called "CompScope" is designed to provide annual performance report cards for the 15 to 25 largest and most interesting states. Meaningful interstate comparisons of performance measures will be provided. This will enable benchmarking of system performance against the "best" systems. California is one of the first states they hope to study.

WCRI is asking that the Commission contribute funds over a three-year period. DWC supports this effort, but will not participate in the funding. Should the Commission so choose, WCRI is willing to provide additional information and/or present its proposal at a Commission meeting.

After some discussion, the Commission members agreed to defer this issue until the next meeting.

California Study Group on Young Worker Health and Safety

Commissioner Vach said he wanted to make a point to clear up any potential conflict of interest. When CHSWC's California Study Group on Young Worker Health and Safety project was announced, he proposed that his wife serve as one of the task force members. She is a high school career counselor and is in charge of the School-to-Career program for the second largest high school district in the state. She

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has also been involved with similar type task forces through the California Association of Work Experience Educators..

Chairman Hlawek responded that he appreciated that the project had someone with such expertise interested in participating and that he did not have a problem with it.

Chairman Hlawek then asked if there were any comments from the public.

Public Comments

Linda Berg introduced herself and said she was injured on the job while working as a union surveyor eight years ago in Santa Clara County. She became infected with Lyme disease -- a tick-borne illness that can become chronic and debilitating and for which there is as yet no cure, unless it's immediately treated with antibiotics, which in her case was not.

Ms. Berg said that in the last eight years, its been a whole new adventure dealing with this workers' compensation system. She understand that 1/3 of the homeless people, of which she is one, are injured workers. She expressed concern that California ranks low in the amount of benefits that go to the injured workers. She believes that much money goes to physicians and attorneys and that the workers' compensation system has been very good to them for writing reports for the insurance companies against the injured workers.

Ms. Berg said that she had called and written letters to DWC Administrative Director Casey Young but could never get through to him. She has also contacted the Industrial Medical Council, the Fraud Unit in the Department of Insurance, the Sonoma County District Attorney and the Santa Rosa Press-Democrat newspaper.

She said that she has taken her case on up through the channels and up to the Supreme Court. In addition, Ms. Berg said that she is currently trying to get together a class action suit against the entire system. She is doing this to get everyone's attention because "the system is broken. It works really well for the insurers, their attorneys, and their doctors. It has made them millionaires. It has made a lot of the rest of us homeless and still injured. I still test positive today for Lyme infection and am still under treatment, expensive antibiotics supplied to me only via Medi-Cal because I am impoverished to that point."

After some discussion about Ms. Berg's case, Chairman Hlawek thanked her for her testimony and expressed appreciation for her comments.

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Future Meetings

The next meeting of the Commission will be held Thursday, June 19, 1997 at 10 a.m. in the First Floor Auditorium in the State Building at 107 South Broadway in Los Angeles.

Adjournment

The meeting was adjourned at 1:30 p.m. by Chairman Hlawek.

Approved:

Respectfully submitted,

James J. Hlawek ^{bef cis} *June 19, 1997* *Christine Baker*
James J. Hlawek, Chairman Date Christine Baker, Executive Officer